Supreme Court of the United States

OCTOBER TERM 1941

No. 757

In the Matter
of
The Prudence Company, Inc.,
Debtor.

In the Matter
of
Amalgamated Properties, Inc.,
Debtor.

In the Matter
of
A Plan of Reorganization of Amalgamated Properties, Inc., Debtor, in respect of the Zo-Gale First Mortgage Participation Certificates.

Prudence Realization Corporation,
Petitioner,
A. Joseph Geist, Trustee,
Respondent.

In Consolidated Proceedings for Reorganization under Section 77B of the Bankruptcy Act.

Nos. 27496 and 27028.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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To the Honorable the Chief Justice of the Supreme Court of the United States of America and the Honorable Associate Justices thereof:

Your petitioner, Prudence Realization Corporation, respectfully submits this, its petition for a writ of certiorari to review the decision and order of the United States Circuit Court of Appeals for the Second Circuit in the above cause affirming the order of the District Court determining that certificates of participation and other interests held by Prudence Realization Corporation (hereinafter sometimes described as the creditors corporation) in a mortgage participation certificate issue covering premises (an apartment house) at No. 202 Riverside Drive, New York City, also known as the Zo-Gale Certificate Issue, are subordinated in time of payment of principal and interest to similar certificates of participation held by the other certificate holders.

Opinions Below

Written opinions have been rendered by the District Court (R. 46-48*, not yet reported) and by the Circuit Court of Appeals for the Second Circuit, reported at 122 F. (2d) 503.

Jurisdiction

The decree of the Circuit Court of Appeals was entered on August 29, 1941 (R. 74-75). The jurisdiction of this Court is invoked under Section 240a of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A., Sec. 347-a).

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*The record consists of a Transcript of Record and a Transcript of Additional Record. The additional record is composed of exhibits annexed to the original answering affidavit filed in the District Court (R. 35). An order was secured from the Circuit Court of Appeals dispensing with the requirement that these exhibits be printed as part of the record on appeal. Copies were submitted to the Court upon the argument of the appeal, and have here been printed as the Additional Record. Record references in the within petition are made to the main record as "R. ....", and to the Additional Record as "Add. R. ....".

Questions Presented

The majority of the Circuit Court of Appeals held the decisions of the New York Court of Appeals controlling on the issues presented on this appeal and accordingly decided that the interests of Prudence Realization Corporation are subordinate in time of payment to those of the other certificate holders. The Court also held that, despite the fact that preferences unauthorized by the Bankruptcy Act would result, the New York rule of distribution should be applied here so that creditors of all insolvent New York mortgage guarantee companies should receive similar treatment without regard to the tribunal in which the proceeding for the liquidation of any such guarantor took place. The principal questions involved are:

(1) Was the Circuit Court of Appeals, under the decision of this Court in *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188, obliged to follow the decisions of the New York Court of Appeals even though the adoption of the rule of distribution established by such decisions results in restricting the equitable power of the bankruptcy court to classify creditors' claims for purposes of distribution under the Bankruptcy Act?

(2) Did the Circuit Court of Appeals, in following the state court decisions, improperly impose a restriction upon the equitable powers of the bankruptcy court to classify creditors' claims?

(3) Did the Circuit Court of Appeals properly impose upon the remaining unsecured creditors of an insolvent guarantor the burden of showing that the granting of priority to other unsecured creditors of the same insolvent would be inequitable?

(4) Was the Circuit Court of Appeals justified in granting preferential rights to certain creditors of the insolvent guarantor, after the confirmation of a

creditors' plan of reorganization for the guarantor-debtor under Section 77B of the National Bankruptcy Act, where such plan did not provide for such preference and where such creditors were not separately classified?

Statement

The Prudence Company, Inc., hereafter called "Prudence", was organized under the Banking Law of the State of New York in 1919. It was engaged in the business of making loans secured by mortgages on real estate. The bonds and mortgages received for such loans were assigned to an affiliated corporation, Prudence-Bonds Corporation, the stock of which was owned by New York Investors, Inc., which also owned all of the common stock of Prudence (R. 22). Prudence-Bonds Corporation transferred these bonds and mortgages to corporate trust companies, called depositaries, and issued certificates of participation in such mortgages to Prudence, which in turn sold them to the general public together with its guaranty of payment of principal and interest (R. 22). These mortgage participation certificates constituted the holders thereof tenants in common of the underlying mortgage and bond secured thereby (*In re Westover* [C. C. A. 2d] 82 F. [2d] 177).

In the course of its business, from time to time Prudence either repurchased some of these certificates from the investing public, or received them in exchange for certificates in other mortgages. The certificates on hand, either prior to sale to the public or upon reacquisition, were included in the corporate assets of Prudence as evidenced by published financial statements and corporate balance sheets prepared by certified public accountants (R. 24). It was the intention of Prudence, in each instance upon the acquisition of the aforementioned certificates, to hold them as investments, and not in cancellation or payment of its guarantee obligation (R. 24).

Prudence Realization Corporation, the petitioner here, was organized pursuant to a plan of reorganization for Prudence under Section 77B of the Bankruptcy Act (Add. R. Ex. "D"). The plan was proposed by Reconstruction Finance Corporation, the largest single creditor of Prudence, after a finding had been made that Prudence was insolvent. The plan provides that the stockholders of Prudence have no interest in the liquidation of its assets, and provides for the distribution of the proceeds of such liquidation to creditors only (Add. R. Ex. "D" Plan, p. 9). Petitioner is therefore solely a creditors' realization corporation and in no way represents interests of the old stockholders.

The Zo-Gale Certificate Issue was created in the manner above described. The mortgage, originally in the principal amount of $480,000, was reduced by payment by the mortgagor to $390,000. Certificates to the extent of $382,800 are now outstanding. Included in the assets of the insolvent Prudence estate transferred to petitioner are $816.67 in principal amount of Zo-Gale certificates which were repurchased by Prudence, in 1932 for full value (R. 23-24). The remaining $7,200 interest in the mortgage, against which no certificates were issued, is now also held by petitioner, and was acquired by the Prudence Trustees in the manner and under the conditions hereinafter described (R. 26-27).

In January, 1935, an involuntary petition for the reorganization of Prudence under Section 77B of the Bankruptcy Act was filed in the Eastern District Court and on February 1, 1935, the petition, consolidated with the debtor's voluntary petition for reorganization was approved and trustees appointed. An order was entered in that proceeding prescribing the procedure for the filing of proofs of claim by creditors, including certificate holders of the Zo-Gale Issue, who were unsecured creditors of the debtor (R. 26). In these proofs of claim, certificate holders asserted unsecured claims for the full principal and interest due on the Prudence guaranty of the certifi-

cates held by them (Add. R. Ex. "B"), and they were allowed as such.

Included in the assets of the Prudence estate were a substantial number of obligations of Prudence-Bonds Corporation, which was being reorganized in the same court. A dispute arose as to the participation of the Prudence interest in the creditors' plan of reorganization for Prudence-Bonds Corporation. The dispute was compromised and as part of the adjustment it was agreed that the Prudence-Bonds Corporation Trustees would transfer the uncertificated interest in the certificate issues of Prudence-Bonds Corporation, including the $7,200 interest in the Zo-Gale mortgage, to the Prudence Trustees, subject, however, to claims of general creditors of Prudence-Bonds Corporation (R. 26-27).

On March 16, 1936, pursuant to authorization secured in the Prudence proceeding, the petition for reorganization of Amalgamated Properties, Inc., as a subsidiary of Prudence, was approved by the Eastern District Court (R. 27-28). Included among its assets was the real property subject to the Zo-Gale Certificate Issue mortgage and in that proceeding a plan of reorganization for that issue was proposed which provided for the transfer of the real property by Amalgamated to a Trustee appointed for certificate holders, who also pursuant to said plan acquired the certificated mortgage. The lien of the mortgage was preserved for the benefit of all the certificate holders, who also became co-owners of the real estate. That plan of reorganization for the Zo-Gale Issue, as amended, was finally approved by the District Court on February 19, 1938, and the property, together with the entire outstanding mortgage, was transferred to A. Joseph Geist, Trustee, appellee herein (R. 10-11).

Included in that plan of reorganization and in the order of confirmation was a provision that the rights of the certificates owned by Prudence to share on a parity with those held by the other certificate holders were left open or reserved for future judicial determination. This pro-

vision also related to the uncertificated interest or share, and the 77B Trustees of Prudence consented to the plan of reorganization so as to permit the transfer of administration to certificate holders (R. 12).

Throughout the proceedings above described, from February 1, 1935, Prudence was in reorganization and in 1938 a creditors' plan of reorganization for Prudence was proposed by Reconstruction Finance Corporation, its most substantial creditor. *The order confirming the plan determines that there are no claims having priority except tax claims and claims for administration expenses* (Add. R. Ex. "D", Order, p. 13). Copies of that plan of reorganization were forwarded to every holder of a guaranty claim as well as other creditors of Prudence. Included in the guaranty claimants were the certificate holders in the Zo-Gale Issue. Throughout the period of consideration of the plan of reorganization, no claim was ever asserted in the Prudence proceeding on behalf of any Zo-Gale certificate holders to priority in distribution, nor was any claim made in that proceeding that by reason of the default by Prudence on its guaranty of the Zo-Gale certificate, the certificates held by Prudence in this issue were to be deemed subordinate to those held by other certificate holders (R. 26, 28). The plan of reorganization for Prudence was approved by the District Court on May 26, 1929, *fifteen months after the Zo-Gale plan was confirmed by the same judge* (R. 29).

In accordance with the provisions of the plan for Prudence, all of the assets of Prudence and its Trustees were transferred and assigned over to petitioner, the creditors' realization corporation, by assignment dated June 1, 1939. Included in those assets were the certificates and uncertificated interest in the Zo-Gale Certificate Issue (R. 11-12). As is set forth in the order confirming the Prudence Plan, there are outstanding obligations of Prudence aggregating $134,123,298.95 (Add. R. Ex. "D", p. 8). Of these claims only the claim of the United States of America for $400,000 has been fully paid.

Prior to the institution of the proceedings for the reorganization of Prudence, and in 1932, all of the stock of Amalgamated Properties, Inc., had been deposited as part of the collateral for a loan made by Reconstruction Finance Corporation to Prudence. In 1938, in accordance with a decision of the Circuit Court of Appeals for the Second Circuit (*In re The Prudence Company, Inc.*, 90 F. [2d] 587) the control and complete ownership of that subsidiary of Prudence passed from the bankrupt estate to Reconstruction Finance Corporation.

Prudence-Bonds Corporation was found insolvent in March, 1937, and a plan of reorganization was confirmed which transferred all of its assets to a new corporation for the benefit of its secured creditors. *In re Prudence-Bonds Corporation,* (C. C. A. 2d) 122 F. (2d) 258, 261.

The instant proceeding was instituted by A. Joseph Geist, who was appointed in the Zo-Gale Certificate Issue reorganization trustee of the mortgage and underlying real property. The prayer for relief sought an order determining that the certificates and uncertificated share, now held by petitioner, the creditors' realization corporation, were subordinate to those held by the general public and that no payments of either principal or interest should be made on such certificates or share until other certificate holders had received in full the principal and interest which had been guaranteed by Prudence (R. 12-13).

The District Court held that the rights of the other certificate holders in the Zo-Gale Certificate Issue were superior to those of the other creditors acting through Prudence Realization Corporation and therefore granted the application in all respects. The order entered upon such decision determines, first, that the certificates and share in this issue held by Prudence Realization Corporation for the benefit of all of the Prudence creditors are subordinate to those of the other certificate holders, and second, that no payment shall be made upon such certificates or share to Prudence Realization Corporation "until the third party

certificate holders have been paid in full the principal and interest guaranteed under the certificates held by such third party certificate holders" (R. 50).

The United States Circuit Court of Appeals for the Second Circuit on August 11, 1941, handed down its opinion affirming the decision of the District Court. The affirmance was by a divided court, the majority opinion being written by Circuit Judge Charles E. Clark and concurred in by Circuit Judge Thomas W. Swan and the dissenting opinion being written by Circuit Judge Jerome N. Frank (R. 57-73).

The majority believed the decisions of the New York Court of Appeals on the question of parity to be controlling under the decision of this Court in *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188, 114 A. L. R. 1487.

The issue between the parties to this appeal is whether the holders of certificates in the Zo-Gale Issue are entitled to a position of priority as against the other creditors of insolvent Prudence even though the Prudence plan makes no provision for special treatment of claims of these certificate holders or others similarly situated. Petitioner as the creditors' liquidating corporation represents all creditors of Prudence, including the Zo-Gale certificate holders, and the preference authorized by the majority in the Court below is solely at the expense of the remaining creditors. The decision affects $1,096,916 principal amount of certificates of the Zo-Gale and other issues now constituting part of the assets of the Prudence estate, as well as over $300,000 in cash representing interest accumulations to which *all* creditors will be entitled if the decision of the Circuit Court of Appeals is reversed.

Specification of Errors

The Court below erred,

(1) in holding that the certificates of participation in the Zo-Gale Certificate Issue owned by Prudence Realization Corporation are not entitled to parity of distribution with other certificates held by the general public, but are subordinate to the certificates held by others;

(2) in holding that the decisions of the New York Courts determining questions of distribution of an insolvent mortgage guaranty company's assets under State statutes are binding upon the Bankruptcy Court under the authority of *Erie R. Co.* v. *Tompkins;* 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188;

(3) in holding that Prudence Realization Corporation as owner of the uncertificated interest acquired from Prudence-Bonds Corporation in the Zo-Gale mortgage is not entitled to parity of distribution with the other holders of certificates, but is subordinate to such other holders;

(4) in failing to hold that, in accordance with the provisions of the Bankruptcy Act, Prudence Realization Corporation is entitled to share equally with other certificate holders in the proceeds of the Zo-Gale Mortgage Certificate Issue;

(5) in failing to hold that, by the failure of the other holders of Zo-Gale certificates to file claims for priority in the Prudence proceeding or require provision for priority in their favor in the plan of reorganization for Prudence, such holders have waived their rights and may participate only as general creditors without priority or preference as against any other creditors of Prudence.

Reasons Relied On for the Allowance of the Writ

(1). The majority of the Court below has erroneously misconceived the extent to which federal courts are required to follow state court decisions under *Erie R. Co.* v. *Tompkins,* 304 U. S. 64, 58 Sup. Ct. 817, L. Ed. 1188, 114 A. L. R. 1487, and the decision of the majority is substantially in conflict with the decisions of this Court in *Sampsell* v. *Imperial Paper & Color Corporation,* 61 Sup. Ct. 904, and *Pepper* v. *Litton,* 308 U. S. 295, 60 S. Ct. 238, 84 L. Ed. 281. The majority considered itself bound by the decision in *Erie R. Co.* v. *Tompkins, supra,* to follow the decisions of the New York Courts holding that, in the absence of clear and unambiguous language showing a contrary intent of the parties, public holders of guaranteed mortgage obligations are entitled to priority of distribution in the proceeds of the primary security as against the insolvent guarantor's creditors (R. 62) (122 F. [2d] 503, 506). The basis upon which the decision in *Erie R. Co.* v. *Tompkins, supra,* was applied by the majority, was that the state court in reaching its conclusion, did so by interpreting the guaranty and the certificates as a contract providing for such subordination.

In his dissenting opinion, Judge Frank demonstrated that the rule established by the state court was not based upon interpretation of any actual provisions of the contract or of any provisions required to be implied from any language in the contract, but was merely a rule of insolvency distribution arbitrarily read into the contract as a matter of law where the contract was silent as to whether parity or priority was intended by the parties. Thus, in arriving at a rule for the distribution of insolvent estates, the New York Courts, in all cases where there is an absence of clear and unambiguous language showing a contrary intent of the parties, indulge in an irrebuttable presumption that the parties to a contract actually intend that other holders of guaranteed mortgage obligations are

entitled to priority of distribution in the proceeds of the primary security as against an insolvent guarantor's creditors.

Erie v. *Tompkins, supra,* does not require the federal courts to follow such state court decisions. Such decisions in reality merely provide state rules for the distribution of insolvent estates and, as Judge Frank correctly stated, are not binding upon federal courts administering assets of insolvent estates under the Bankruptcy Act, which Act provides, as recognized by the majority below, for pro rata distribution. If *Erie* v. *Tompkins, supra,* is to be extended to compel such decisions to be followed by federal courts of bankruptcy, the result will be the imposition of unwarranted restrictions upon the power of the bankruptcy courts to pass upon the proper classification of claims, which this Court has recognized as requiring review by certiorari. *Pepper* v. *Litton,* 308 U. S. 295, 60 S. Ct. 238, 84 L. Ed. 281.

The majority felt obliged to apply the state court decisions even though the rule there prescribed was admittedly in conflict with rules of distribution under the Bankruptcy Act. The issue between the majority and dissenting judges is whether the state court by transforming what is, by its nature, a rule of insolvency distribution, into a rule of interpretation, can oust the federal courts of their exclusive power to administer a bankrupt estate. The principle subscribed to by the majority of the Court below is that the federal courts are bound by the state court's conclusions, even though that Court implies, as conditions of a contract, rules which are in direct conflict with specific provisions of the Bankruptcy Act, or decisions of the federal courts thereunder.

But the federal courts do not even recognize as valid specific provisions of state statutes which in reality create preferences inconsistent with the system of equal distribution established by the federal law. *Jennings, Receiver* v. *United States Fidelity & Guarantee Co.,* 294 U. S. 216,

55 S. Ct. 394, 79 L. Ed. 869, 99 A. L. R. 1248. There the state statute provided that upon insolvency, any item mailed or entrusted to an agent collecting bank for collection but prior to actual collection, shall be returned to the owner and the assets of the bank shall be impressed with a trust in favor of the owner. The insolvent institution involved was a national bank and in an action instituted against its receiver to impress its assets with a trust under the statute, this Court held that the trust would not be recognized. Mr. Justice Cardozo, speaking for this Court, said at page 226:

> "A trust so created, to arise upon insolvency, is a preference under another name. As applied to a national bank, the preference is plainly inconsistent with the system of equal distribution established by the federal law. R. S. § 5236; 12 U. S. C. § 194; *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, 283, 284; *Easton* v. *Iowa*, 188 U. S. 220, 229; *Cook County National Bank* v. *United States*, 107 U. S. 445; *Texas & Pacific Ry. Co.* v. *Pottorff*, 291 U. S. 245; *Lewis* v. *Fidelity & Deposit Co. of Maryland*, *supra* (292 U. S. 449). The power of the nation within the field of its legitimate exercise overrides in case of conflict the power of the states."

There can be no doubt that the same conclusion would have been reached by this Court even if no state statute was involved and the state court judicially had arrived at a determination that the owner was entitled to have a trust impressed.

The legality of a preference arising through state judicial construction is determined, not by the local law creating it, but by the provisions of the federal statute under which it is being enforced. The issue is one for federal determination and is "not influenced by consideration of local law." *Yonkers* v. *Downey, Receiver*, 309 U. S. 590, 597, 60 S. Ct. 796, 84 L. Ed. 964. As Judge Frank said in the instant case (R. 71) (122 F. [2d] at p. 510):

> "In applying the doctrine of *Taylor* v. *Standard Gas & Electric Co.*, *supra*, 306 U. S. 307, 59 S. Ct. 543, 83

L. Ed. 669, the Supreme Court did not look to the decisions of the State Court. If the courts of that state were hostile to the rule of the Taylor case; and (taking a hint from the majority opinion in the instant case) were to say that it construes contracts made by creditors with a subsidiary corporation as showing an intention to exclude the rule of the *Taylor* case unless expressly contracted for, I doubt whether the Supreme Court would, simply on that account, refuse to apply that rule. In other words, I doubt whether *Erie* v. *Tompkins* is so cannibalistic.

"And my doubt is especially strong where the rule of the State Court is squarely contrary to the federal rule under the federal Bankruptcy statute and where federal jurisdiction is founded upon that statute."

Furthermore, under the state court decisions here involved, the burden of showing that it would be inequitable to disallow priority to guaranteed certificates held by others as against certificates held for the benefit of all of the creditors of the insolvent guarantor, is placed upon the representative of all of such creditors. Such a rule is in direct conflict with the decision of this Court in *Sampsell* v. *Imperial Paper & Color Corporation*, 61 S. Ct. 904, where this Court stated at page 904:

"But the theme of the Bankruptcy Act is equality of distribution. § 65, sub. a, 11 U. S. C. A. § 105; sub. a; *Moore* v. *Bay*, 284 U. S. 4, 52 Sup. Ct. 3, 76 L. Ed. 133, 76 A. L. R. 1198. To bring himself outside of that rule an unsecured creditor carries a burden of showing by clear and convincing evidence that its application to his case so as to deny him priority would work an injustice."

(2) The decision of the Court below has established the principal of uniformity between federal and state courts which has no precedent in any decisions of this Court. The majority has suggested that even if the New York decisions are not binding upon the federal court and are in conflict with the Bankruptcy Act, they should be followed, for creditors of different New York mortgage guaranty com-

panies should receive similar treatment without respect to the tribunal in which the proceedings for the liquidation of the guarantor occurs (R. 64) (122 F. [2d] at p. 507).

This argument ignores the fact that the New York decisions were rendered in connection with the liquidation of such companies under specific statutory provision (New York Insurance Law, Art. XVI), and that the reorganizations referred to in the cited decisions were statutory proceedings ("Schackno Act", New York L. 1933, ch. 745; "Mortgage Commission Act", New York L. 1935, ch. 19).

The adoption of the doctrine suggested by the majority results in judicially permitting the state insolvency laws to supercede the Bankruptcy Act. It transforms the bankruptcy court into a forum in which the administration of the Bankruptcy Act is controlled, not by the Acts of Congress nor by decisions of this Court, but by the statutes or decisions of the state court. Such surrender of federal prerogative in the field of bankruptcy law is without precedent and violates the spirit and intent of the Constitution (Art. I, Sec. 8); *International Shoe Co.* v. *Pinkus*, 278 U. S. 261, 49 S. Ct. 108, 73 L. Ed. 318.

As was stated by Judge Frank, dissenting below (R. 72) (122 F. [2d] 503, 510):

> "Related considerations are pertinent with respect to the suggestion in the majority opinion that, even if we are free to ignore the New York rule, we should not do so, since, thereby, persons in similar circumstances, vis-a-vis an insolvent guarantor, will be treated differently by state and federal tribunals. Such an argument is self-defeating: No doubt uniformity between state and federal courts is desirable; but so is nationwide uniformity of bankruptcy administration; if the majority opinion assists in establishing the first of these, it helps to destroy the second. Where a paramount public policy does not demand it, I can see no reason for our going out of our way to transplant, from the state to the federal courts, a doctrine which is so curiously lacking in logic and fairness as the New York rule of automatic subordination."

(3) The majority of the Court below in determining that other certificate holders are entitled to priority as against the remaining Prudence creditors "as a matter of practical equity", merely relied on the erroneous assumption that there was here involved a consideration of mutual claims between inter-related companies, which therefore justified the conclusion that their customers should receive prior payment (R. 64) (122 F. [2d] at 507). The original relationship between Prudence (the guarantor), Prudence-Bonds Corporation (the mortgagee) and Amalgamated Properties, Inc. (the debtor), to which the majority referred, has been extinguished. Prudence and Prudence-Bonds Corporation, judicially found to be insolvent, have been reorganized separately for the sole benefit of their creditors (Add. R. Ex. D Plan, p. 9; *In re Prudence-Bonds Corporation* [C. C. A. 2d] 122 F. [2d] 258, 261). The creditors of Prudence-Bonds Corporation, who are now its sole owners are also creditors of Prudence. Amalgamated Properties, Inc., is now owned by Reconstruction Finance Corporation, also a Prudence creditor, which accepted the Amalgamated stock as part of the security for a loan to Prudence prior to the date of the acquisition by Prudence of the Zo-Gale certificates here in question. *In re The Prudence Company, Inc.*, (C. C. A. 2d) 90 F. (2d) 587.

The issue here therefore remains one solely between creditors of Prudence and not between inter-related corporate entities, and to use the majority's own words, "as a matter of practical equity", all of such creditors should receive similar treatment without priority or preference in favor of one as against the others, particularly where as here, the holders of Zo-Gale certificates who have been granted priority, are also guaranty creditors, entitled to share in the distribution of the assets of petitioner.

CONCLUSION

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted to review the decision and order of the Circuit Court of Appeals for the Second Circuit.

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November, 1941.